

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**IN RE GENETICALLY MODIFIED
RICE LITIGATION**

**4:06 MD 1811 CDP
ALL CASES**

**LEAD COUNSEL FOR PLAINTIFFS' PROPOSED
CASE MANAGEMENT ORDER NO. 9**

The claims of twenty-one named Plaintiffs in the Master Complaint shall be the first claims tried as part of this MDL proceeding.¹ These twenty-one named Plaintiffs are from the five largest long-grain rice-producing states - - five Plaintiffs from Arkansas, four Plaintiffs from Louisiana, four Plaintiffs from Mississippi, four Plaintiffs from Missouri, and four Plaintiffs from Texas. Each of the named Plaintiffs already has answered interrogatories, produced extensive documents related to their farming operations, and given a deposition. Discovery as to these Plaintiffs is virtually complete. As previously recognized in the Court's class certification ruling, the Court has authority to try these claims. Taking these cases through trial should provide guidance to the parties on the factual and legal issues presented in this litigation.

At the same time the claims of these Producer Plaintiffs are being prepared for trial, discovery related to the claims of other Plaintiffs - - Producer and Non-Producer Plaintiffs - - needs to move forward in an orderly sequence to permit: (1) timely trials of the remaining

¹ In reference to the number of "Plaintiffs" throughout this Order, partnerships shall be counted as one Plaintiff regardless of the number of partners in that partnership who are named.

cases to be tried in this District; and (2) remand of all other cases to their originating jurisdictions at the earliest practicable time.

To these ends, the Court sets the following deadlines:

I. DEADLINES RELATING TO THE CLAIMS OF THE PRODUCER PLAINTIFFS IN THE MASTER COMPLAINT.

A. Amendment of Master Complaint

1. Plaintiffs shall file any amendment to the Master Complaint, including any amendment to address capacity issues, no later than November 7, 2008.
2. If Defendants believe that Plaintiffs' amendment does not properly allege capacity, or authority to sue, as to any Plaintiff, Defendants shall raise this issue by a specific denial in regard to that Plaintiff, which must state any supporting facts as required by Rule 9(a)(2), Fed.R.Civ.P.
3. The parties shall notify the Court promptly if there remains a dispute as to the capacity or authority to sue relating to the Master Complaint, and the Court will order a briefing schedule and, if appropriate, schedule a hearing.

B. Pre-trial Deadlines for Trials of the Claims in the Master Complaint.

1. Fact discovery shall be completed by April 3, 2009.
2. Plaintiffs' expert disclosures shall be served by April 3, 2009.
3. Plaintiffs' designated experts shall be deposed by May 1, 2009.
4. Defendants' expert disclosures shall be served by May 29, 2009.
5. Defendants' designated experts shall be deposed by June 26, 2009.

6. Plaintiffs' rebuttal expert disclosures, if any, shall be served by July 24, 2009.
7. Plaintiffs' rebuttal experts shall be deposed by August 14, 2009.
8. All discovery shall close on August 14, 2009.
9. Dispositive and *Daubert* motions, if any, shall be filed by August 21, 2009, responses by September 18, 2009 and replies by October 2, 2009.
10. The claims in the Master Complaint should be ready for trial by November 9, 2009.
11. No later than July 3, 2009, the parties shall advise the court as to the number of trials they believe will be necessary to properly try the claims in the Master Complaint, the anticipated length of those trials, and the identity of the Plaintiffs in each trial. For planning purposes, the Court will schedule five separate trials - - one for plaintiffs in each of the five rice-producing states - - and plan that each of those trials will last no more than two weeks.

II. DEADLINES RELATING TO CLAIMS OF OTHER PRODUCER PLAINTIFFS.

A. *Lexecon* Waiver.

1. Cases pending in this Court on October 1, 2008.

All Producer Plaintiffs whose actions were filed in or transferred into and docketed in this District by the JPML by October 1, 2008 must, on or before November 28, 2008, notify the Court and the parties by electronic filing if they are willing to waive the requirements of *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26

(1998) to permit trial in this District. Defendants in any case in which Plaintiffs have filed such a waiver shall have until December 8, 2008 to assert any objections to trial of such a case in this District based on *Lexecon*, improper venue or otherwise. All such cases in which no Defendant has asserted an objection, or an asserted objection has been overruled, along with all cases initially filed in this District, will be called “Cases To Be Tried In This District.” All other Producer cases will be called “Cases To Be Remanded.”

2. Cases filed in or Transferred to this Court after October 1, 2008.

All Producer Plaintiffs whose actions were filed in or transferred into and docketed in this Court after October 1, 2008 must notify the Court and the parties through electronic filing, within twenty days after the case is docketed in this Court, if they are willing to waive the requirements of *Lexecon* to permit trial in this District. Defendants in any case in which Plaintiffs have filed such a waiver shall have ten business days to assert any objections to trial of this case based on *Lexecon*, improper venue, or otherwise.

Lead Counsel for any Producer Plaintiff whose action is filed in or transferred to this Court after October 1, 2008, shall confer with Lead Counsel for Defendants, as well as counsel for any non-Bayer Defendant to such case, and file a Joint Statement, within twenty days after the case is docketed with this Court, stating whether the parties agree to follow the discovery deadlines set forth in this Case

Management Order or are proposing an agreed scheduling order that the parties will follow in that action.

B. Case-Specific Discovery in Cases to be Tried in this District.

Any case-specific discovery in Cases to Be Tried in This District shall continue to be stayed until further Order of this Court, with the exceptions set forth below.

No later than January 9, 2009, Defendants collectively and Plaintiffs collectively, through Lead Counsel, from the Cases To Be Tried in This District, shall each select five Plaintiffs domiciled in Arkansas, five Plaintiffs domiciled in Missouri, and five Plaintiffs domiciled in each state in which at least ten Plaintiffs in Cases To Be Tried in This District are domiciled. These Plaintiffs will be the next Plaintiffs whose claims will be tried in this District. For these Plaintiffs, the following deadlines shall apply:

1. Plaintiff Fact Sheets, including responses to the four document requests, shall be completed by February 29, 2009.
2. Any amendment to the pleadings shall be filed by March 13, 2009.
3. Case-specific written discovery and notices of deposition related to these Plaintiffs' claims may be served on or after April 3, 2009.
4. The parties shall meet and confer no later than July 3, 2009 and propose to the Court pre-trial deadlines leading to the trial of these cases in February, 2010 and also address the selection of the next group of cases to be tried in this District and discovery and pre-trial deadlines relating to those cases.

C. Case-Specific Discovery in Cases To Be Remanded.

Any case-specific discovery in Cases to be Remanded shall continue to be stayed with the following exceptions:

No later than January 9, 2009, Defendants collectively and Plaintiffs collectively, through Lead Counsel, shall each select from the Cases To Be Remanded five Plaintiffs who filed cases in each of the following originating jurisdictions: Eastern District of Arkansas; Western District of Louisiana and Southern District of Texas. For these Plaintiffs, the following deadlines shall apply:

1. Plaintiff Fact Sheets, including responses to the four document requests, shall be completed by February 29, 2009.
2. Any amendment to the pleadings shall be filed by March 13, 2009.
3. Case-specific written discovery and notices of deposition related to these Plaintiffs' claims may be served on or after April 3, 2009.

D. Remand of Cases to be Remanded.

Any party to any of the Cases To Be Remanded may move, on or after August 14, 2009 for a suggestion of remand. Any opposition to the suggestion of remand shall be filed within fourteen days of the filing of the suggestion, and any reply shall be filed within seven days thereafter.

III. Deadlines Related to Non-Producer Cases.

[NOTE: Lead Counsel for the Plaintiffs and members of Plaintiffs' Executive Committee have sought input from counsel for various Non-Producer Plaintiffs and also attempted to secure agreement from the Bayer Defendants' and other

Defendants’ counsel to an overall CMO for the Non-Producer Cases. Several Non-Producer Cases are subject to this Court’s Case Management Order No. 8, whereas other cases were previously governed by this Court’s other case management orders, including those applicable to the Producer Plaintiffs. A set of mutually agreeable deadlines applicable to all Non-Producer Cases and all parties to those cases is not able to be proposed due to fundamental, good faith differences not only between the Non Producer Plaintiffs and the Bayer Defendants, but also (i) between parties whose cases were previously subject to CMO 8 and those not, (ii) between plaintiffs subject to CMO 8 and certain defendants to those cases who also have third party claims against the Bayer Defendants, (iii) between those Non Producer Plaintiffs who wish to conduct all discovery, including case specific discovery (fact and expert), in this Court and those who wish to conduct case specific discovery (fact and expert) in the transferor courts after remand, and (iv) potentially between those cases already pending in this Court and those to be transferred later. Accordingly, the proposals below provide for a number of choices for this Court to make based upon these several factors, and Lead Counsel defers to the various parties to argue for their respective positions. However, what is presented also highlights where significant areas of agreement do exist.]

A. Definitions.

1. **“Non-Producer”** refers to any Plaintiff who is not solely a “Producer” as that term is defined in 7 C.F.R. § 718.2 and set forth on page 33 of Plaintiffs’ Reply Memorandum of Law in Further Support of Their Motion for Class Certification (Dkt. # 684).
2. **“Non-Producer Case”** refers to any case in which at least one Plaintiff is a “Non-Producer.”

3. **“Lexecon”** refers to *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

4. **“Lexecon Waiver”** refers to a waiver of the requirements of *Lexecon* to permit trial in this District of any Non-Producer Case not originally filed in this District.

5. **“Non-Producer Cases Pending in this Court on October 1, 2008”** refers to any Non-Producer Case either originally filed in this District or transferred by the JPML into and docketed in this District on or before October 1, 2008.

6. **“Non-Producer Cases Pending in this Court After October 1, 2008”** refers to any Non-Producer Case either originally filed in this District or transferred by the JPML into and docketed in this District after October 1, 2008.

7. **“Non-Producer Cases to Be Tried in this District”** refers to any Non-Producer Case either (i) originally filed in this District or (ii) as to which a *Lexecon Waiver* has been filed and agreed to by all parties or (iii) as to which this Court has overruled any objections by any party to a *Lexecon Waiver* or any objections by any party as to improper venue or otherwise for a trial of the case in this District.

8. **“Non-Producer Cases to Be Remanded”** shall mean all Non-Producer Cases other than “Non-Producer Cases to Be Tried in this District.”

9. **“Non-Producer Cases Subject to Case Management Order No. 8”** shall refer to the three cases noted in the caption to Case Management Order No. 8 as well as (i) *Rickmers Reismuehle GmbH v. Riceland Foods, Inc.* (Cause No. 4:08CV0500CDP) and (ii) any other Non-Producer Case in which all parties agree to be bound by Case Management Order No. 8, as modified herein, and who file joint notices of such agreement with this Court on or before October 30, 2008.

B. Identification of Non-Producer Cases Pending in this Court on October 1, 2008.

The cases listed on Schedule 1 to this Case Management Order No. 9 are the Non-Producer Cases Pending in this Court on October 1, 2008. If any party to any other case not listed on Schedule 1 but filed in or transferred to and docketed in this Court as of October 1, 2008, contends that such case should be treated as a Non-Producer case, then such party shall notify the Court in writing on or before October 30, 2008. In such event, the case shall be treated as a Producer case under this Case Management Order No. 9 until such time as the Court determines the case is a Non-Producer Case.

C. Non-Producer Cases with Both Producer and Non-Producer Plaintiffs

Any Non-Producer Case, whether Pending in this Court On or After October 1, 2008, in which at least one Plaintiff is a Non-Producer shall be treated as a Non-Producer Case, subject to the right of any Producer Plaintiff to such case to seek a severance of such claims. If such a severance is granted, such Producer's severed case, no matter when originally filed in or transferred to this Court, shall be treated as a Producer Case Pending in this Court After October 1, 2008.

D. *Lexecon Waiver.*

1. Cases Pending in this Court on October 1, 2008.

All Plaintiffs to any Non-Producer Case Pending in this Court on October 1, 2008 must, on or before November 28, 2008, notify the Court and all parties to that case by electronic filing if they assert a *Lexecon Waiver*. Any other party to any Non-Producer Case in which any Plaintiff(s) has (have) filed a *Lexecon Waiver* shall have until December 8, 2008

to assert any objections to trial of such a case in this District based on *Lexecon*, improper venue or otherwise.

2. Cases Pending in this Court After October 1, 2008.

All Plaintiffs to any Non-Producer Case Pending in this Court After October 1, 2008 must notify the Court and all other parties to that case through electronic filing within twenty (20) days after the case is docketed in this Court, if they assert a *Lexecon Waiver*. Any other party to any Non-Producer Case in which any Plaintiff(s) has (have) filed a *Lexecon Waiver* shall have ten (10) calendar days to assert any objections to trial of this case based on *Lexecon*, improper venue or otherwise.

Lead Counsel for any Non-Producer Plaintiff to any Non-Producer Case Pending in this Court After October 1, 2008, shall confer with Lead Counsel for Defendants, as well as counsel for any non-Bayer Defendant to such case, and file a Joint Statement, within twenty (20) days after the case is docketed with this Court, stating whether the parties agree to follow the deadlines set forth in (i) Case Management Order No. 8, as modified herein; (ii) the provisions of this Case Management Order No. 9; or (iii) propose an alternate scheduling order for that case either with agreed deadlines or noting the parties' points of agreement and disagreement.

E. Scheduling of Trials for Non-Producer Cases To Be Tried In This District.

Counsel for any Plaintiff to a Non-Producer Case to Be Tried In This District, as well as counsel for any Defendant other than the Bayer Defendants to such a case, shall coordinate with Lead Counsel for Plaintiffs and Defendants for the scheduling of trial in their respective cases.

F. Remand of Non-Producer Cases to be Remanded.

Any party to any Non-Producer Cases To Be Remanded may move, on or after August 14, 2009, for a suggestion of remand. Any opposition to a suggestion of remand shall be filed within fourteen (14) days of the filing of the suggestion and any reply shall be filed within seven (7) days thereafter.

G. Discovery in All Non-Producer Cases.

1. Non-Producer Cases Subject to Case Management Order No. 8. **[Note: Some of the Defendants and Third Party Plaintiffs to the cases currently governed by Case Management Order No. 8 (Riceland Foods, Producers and Riviana) propose alternate deadlines, as more fully set forth in Attachment 1; the following revised deadlines are agreed to by the Plaintiffs to the cases currently governed by Case Management Order No. 8. Some significant agreement even between these parties exists as to discovery against the Bayer Defendants.]:**

The deadlines in Case Management Order No. 8 shall remain in full force and effect except for the following:

a. Paragraph 2 of Case Management Order No. 8 shall be deleted and replaced with the following: "Plaintiffs' expert disclosures under Fed. R. Civ. P. 26(a), if any, shall be made no later than April 3, 2009. Defendants' expert disclosures, if any, shall be made no later than May 29, 2009. All depositions of Plaintiffs' experts shall occur on or before May 1, 2009. All depositions of experts designated by Defendants shall occur on or before June 26, 2009. Plaintiffs' rebuttal expert disclosures, if any, shall be made no later than July 24, 2009 and all depositions of any such rebuttal experts shall occur on or before August 14, 2009. All expert discovery shall close on August 14, 2009."

b. Paragraph 3 of Case Management Order No. 8 shall be deleted and replaced with the following: “All fact discovery shall be completed no later than April 3, 2009.”

c. Paragraph 4 of Case Management Order No. 8 shall be deleted and replaced with the following: “All *Daubert* and Dispositive Motions shall be filed in the transferor court in accordance with schedules as may be set by that court.”

2. The following deadlines shall apply to all Non-Producer Cases Pending in this Court on October 1, 2008, other than those governed by Case Management Order No. 8 as modified herein:

a. Fact Discovery. Fact discovery (except as specifically directed to the facts and circumstances of the Plaintiffs in that particular case), including discovery directed to the Foreign Bayer Defendants, if applicable, shall be completed by April 3, 2009. All case-specific fact discovery shall be stayed until further order of this Court.

b. Expert Designation and Expert Discovery. All Non-Producer Plaintiffs shall serve their Initial Expert Disclosures by April 3, 2009, except that case-specific damage expert disclosures will not be required until further order of this Court or the transferor court after remand. Experts designated by the Non-Producer Plaintiffs shall be deposed by May 1, 2009. Defendants shall serve their Initial Expert Disclosures by May 29, 2009. Experts designated by Defendants shall be deposed by June 26, 2009. Non-Producer Plaintiffs’ Rebuttal Expert Disclosures, if any, shall be served by July 24, 2009. All Non-Producer Plaintiffs’ Rebuttal Experts shall be deposed by August 14, 2009. All Expert Discovery shall close on August 14, 2009.

c. Dispositive & Daubert Motions. For Non-Producer Cases To Be Tried In This District, dispositive and *Daubert* motions (except as to case-specific damage experts) shall be filed by August 21, 2009, responses by September 18, 2009, and replies by October 2, 2009. For Non-Producer Cases to Be Remanded, dispositive and *Daubert* motion deadlines will be set by the transferor courts to which those cases are remanded.

Respectfully submitted,

GRAY, RITTER & GRAHAM, P.C.

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Plaintiffs' Executive Committee

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 2nd day of October 2008, electronically filed a copy of the foregoing with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the parties of record.

/s/ Don M. Downing

SCHEDULE 1

Docket # Case		Original No.	Case	Original State	Original District & Division	EDMO Cause No.	Transferred to EDMO
274	Basile Rice Drier & Storage, Inc.	6:07-cv-00513		LA	W.D. Lafayette	4:07cv01015CDP	5/23/07
76	Beaumont Rice Mills, Inc.	3:06-cv-00802		TX	S.D. Galveston	4:07cv00524CDP	3/14/07
337	Cache River Valley Seed, LLC, et al.	3:07-cv-00061		AR	E.D. Little Rock	4:07cv01293CDP	7/17/07
405	Farmers Rice Milling Co., Inc.	2:07-cv-01396		LA	W.D. Lake Charles	4:07cv01780CDP	10/17/07
397	Kennedy Rice Dyers, LLC	3:07-cv-01358		LA	W.D. Monroe	4:07cv01773CDP	10/17/07
409	Planters Rice Mill, LLC	6:07-cv-01359		LA	W.D. Lafayette	4:07cv01795CDP	10/19/07
633	Rickmers Reismuehle GmbH	4:07-cv-00733		AR	E.D. Ark	4:08cv00499CDP	4/14/08
664	Rickmers Reismuehle GmbH	4:07-cv-00732		AR	E.D. Ark	4:08cv00500CDP	4/14/08
613	Riviana Foods, Inc.	4:08-cv-00325		TX	S.D. Texas	4:08cv00375CDP	3/18/08
36	Texana Rice Mill, Ltd., et al.	3:06-cv-00725		TX	S.D. Galveston	4:07cv00416CDP	2/28/07
46	Tilda Ltd.	4:07-cv-000052		AR	E.D. Little Rock	4:07cv00457CDP	3/7/07
147	Tubbs Rice Dryers, Inc., et al	3:07-cv-00188		LA	W.D. Monroe	4:07cv00671CDP	4/6/07
326	Veetee Rice Ltd	4:07-cv-00463		AR	E. D. Little Rock	4:07cv01211CDP	7/2/07

ATTACHMENT 1

II. NON-PRODUCER CASES

Each of the defendants in the Non-Producer Cases are involved in multiple cases in this MDL proceeding. Each of the defendants in the Non-Producer Cases has asserted cross-claims or third party claims against the Bayer defendants. The fact and expert issues and discovery in the Producer Cases as it relates to the Bayer defendants and other third parties are intertwined with the fact and expert issues and discovery in the Non-Producer Cases. Accordingly, the schedule in the Non-Producer cases has been impacted by the overall schedule in the Producer Cases. In addition, it is being proposed by lead counsel for Plaintiffs and Defendants that only Producer Cases be set as “test case” trials. In recognition of this, and consistent with the extended schedule set forth above with respect to the Producer Plaintiff Cases, the Court hereby amends Case Management Order No. 8 as follows:

A. Plaintiffs’ expert disclosures under Fed. R. Civ. P. 26(a)(2), if any, shall be made no later than **June 5, 2009**. Experts designated by Plaintiffs shall be deposed by **July 8, 2009**. Defendants’ expert disclosures under Fed. R. Civ. P. 26(a)(2), if any, shall be made no later than **August 7, 2009**. Experts designated by Defendants shall be deposed by **September 7, 2009**. Plaintiffs shall designate any rebuttal experts and provide disclosures pursuant to Fed. R. Civ. P. 26(a)(2) no later than **October 5, 2009**, and shall produce such witnesses for deposition no later than **October 30, 2009**.

B. Fact discovery directed to the Bayer Defendants shall be completed by **April 3, 2009**. The parties shall complete all remaining discovery no later than **October 30, 2009**.

C. Any motions to dismiss, motions for summary judgment, motions for judgment on the pleadings, *Daubert* motions or other motions to exclude expert witnesses shall be filed no later than **November 9, 2009**. Opposition briefs shall be filed no later than 30 days thereafter or **December 9, 2009**, and reply briefs shall be filed no later than 14 days thereafter or **December 23, 2009**.

D. All other provisions contained in the Court’s previous Case Management Orders remain in full force and effect, except as expressly modified herein.